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Surrogacy, motherhood and Baby Gammy

11 August 2014

By Sascha Callaghan and Ainsley Newson

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The story of baby Gammy, being cared for by his 21-year-old Thai surrogate mother, emerged in late July and has dominated the news since. Mother-of-two Pattaramon Chanbua was offered AU\$16,000 to carry a pregnancy for a West Australian couple and subsequently became pregnant with twins. But when one fetus was diagnosed with Down's syndrome, Chanbua was asked (evidence is conflicting as to by whom) to undergo a partial abortion. She refused. The commissioning couple eventually left Thailand with Gammy's twin sister Pipah and he was left behind.

Gammy's case illustrates how the international surrogacy industry has been booming, particularly in countries like India and Thailand. This trade is fuelled by a preference for biological parenting over adoptive parenting (though there are now claims that a donor egg was used in this case), the availability and comparatively low cost of surrogacy in developing countries and fewer legal complications compared with making domestic surrogacy arrangements. Additionally, commissioning parents are able to transact the entire arrangement over the internet via an agency, with little or no contact with the surrogate.

Indeed, international commercial surrogacy is now so popular that it has overtaken inter-country adoption as a source of babies in the global marketplace. Inter-country adoption has faltered in part due to concerns that emerged over human rights abuses, in particular exploitation of poor women and concerns over conditions and care of adoptees. We now need to question whether the same problem is happening all over again with international surrogacy.

The commissioning couple do not appear to have broken any Australian laws in force at the time the pregnancy was commissioned. Commercial surrogacy is illegal in all eight Australian states and territories (surrogacy is not regulated by federal law). However only New South Wales, Queensland and the Australian Capital Territory have to date legislated against procuring a pregnancy internationally.

Commentators have been swift to condemn many aspects of the case, such as the commissioning parents' alleged behaviour, the biological father's criminal history, the surrogacy agents' conduct, social attitudes towards disability, and the whole spectre of commercial surrogacy arrangements –

particularly those that cross borders – and their legal regulation. There are, of course, extremely important questions that now need to be asked (and answered) about how we can and should protect women and children in this complex business.

But some further aspects of this case stand out for us. First, this case highlights issues over the morality of countries with greater economic resources 'outsourcing' their reproductive problems to countries without as many social goods. Second, scant attention has yet been paid to the appropriateness (or otherwise) of identifying Gammy and Pipah – given the pervasiveness of online content over time. How should we navigate our way through this complex tale of love, money and moral responsibility?

This case has raised difficult questions about the story we tell ourselves about surrogacy, unsettling the comfortable narrative of this process. Is it reasonable to outsource reproductive requirements to countries where women from deprived backgrounds can obtain a slice of the baby marketplace? What, if anything, should commissioning couples be able to 'demand' as part of their surrogacy contracts? Some may see such transactions as a win-win situation, where the surrogate receives a comparably large sum of money in exchange for a baby with the intended parents' DNA.

In this narrative, gestation is physical labour the same as any other. But how realistic is this picture – and is it even desirable? Chanbua has said: 'It's like my child. I love him like my own'. Surrogacy is clearly no ordinary commercial deal. Add to this the element of social disparity across borders and we need to ask whether selling reproductive services between countries is moral. We don't have an easy answer to this problem, but we do want people to ask themselves that question, and ruminate on it.

An important concept for this debate is the troublesome notion of the 'mother-worker'. Pitting our commitment to reproductive freedom and the right to earn a living how we choose against our deeply-held values that revere mother-love and stigmatise women who relinquish children, 'mother-workers' are a contested field. What is a mother? What do good mothers do? What is a worker? What do good workers do? The very public discussion that Chanbua has initiated has blurred these concepts in quite an unsettling way.

Right now, Gammy resides with his surrogate mother in Chonburi, Thailand. More than US\$240,000 has reportedly been raised for his care from concerned folk around the world. We hope that we can now harness these important issues, but leave Gammy and Pipah out of it. Gammy's, and now his sister's, future privacy has already been infringed, and the stories and photos from this sorry tale will likely stay online in perpetuity. We need not forget that these are individuals who will hopefully grow and develop and take on their own identities. Their best interests will not be served by being known as 'those surrogate babies'.